

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DISH NETWORK L.L.C., *et al.*,
Plaintiffs,
v.
ALAN PHU, *et al.*,
Defendants.

Case No. 13-cv-111-L(WVG)

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE FOR LACK
OF SUBJECT MATTER
JURISDICTION**

On January 15, 2013, Plaintiffs Dish Network L.L.C., Echostar Technologies L.L.C., and NagraStar LLC commenced this action to void fraudulent transfers of assets by Defendants Alan Phu, Alcy Investment LLC, Alcy & AJ Investment LLC, AJ Management LLC, and Cyndi Phu, and recover the asset to satisfy a \$64.9 million judgment against Mr. Phu among others. Plaintiffs file this action based on “ancillary subject matter jurisdiction” because Plaintiffs seek to enforce a judgment previously entered by this Court in *Dish Network L.L.C. v. Sonicview USA, Inc.*, No. 09-cv-1553-L(WVG), 2012 WL 1965279 (S.D. Cal. May 31, 2012). (Compl. ¶ 11.)

For the following reasons, the Court finds that Plaintiffs’ complaint is facially deficient and **DISMISSES WITHOUT PREJUDICE** this action in its entirety for lack of subject matter jurisdiction.

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1 I. LEGAL STANDARD

2 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of*
 3 *Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized by Constitution or a
 4 statute, which is not to be expanded by judicial decree.” *Id.* (internal citations omitted). “It is to
 5 be presumed that a cause lies outside this limited jurisdiction and the burden of establishing the
 6 contrary rests upon the party asserting jurisdiction.” *Id.* (internal citations omitted); *see also*
 7 *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006).

8 “[A]ncillary jurisdiction typically involves claims by a defending party haled into court
 9 against his will, or by another person whose rights might be irretrievably lost unless he could
 10 assert them in an ongoing action in federal court.” *Owen Equip. & Erection Co. v. Kroger*, 437
 11 U.S. 365, 376 (1978). “Ancillary jurisdiction may extend to claims having a factual and logical
 12 dependence on ‘the primary lawsuit,’ but that primary lawsuit must contain an independent basis
 13 for federal jurisdiction.” *Peacock v. Thomas*, 516 U.S. 349, 355 (1996) (citing *Owen Equip &*
 14 *Erection*, 437 U.S. at 376) (citations omitted). “The court must have jurisdiction over a case or
 15 controversy before it may assert jurisdiction over ancillary claims.” *Id.* (citing *Mine Workers v.*
 16 *Gibbs*, 383 U.S. 715, 725 (1996)). “In a subsequent lawsuit involving claims with no
 17 independent basis for jurisdiction, a federal court lacks the threshold jurisdictional power that
 18 exists when ancillary claims are asserted in the same proceeding as the claims conferring federal
 19 jurisdiction.” *Id.* (citing *Kokkonen*, 511 U.S. at 380-81; *H.C. Cook Co. v. Beecher*, 217 U.S.
 20 497, 498-99 (1910)). “Consequently, claims alleged to be factually interdependent with and,
 21 hence, ancillary to claims brought in an earlier federal lawsuit will not support federal
 22 jurisdiction over a subsequent lawsuit.” *Id.*

23 Although there has not been a request for dismissal, it is well-established that “a district
 24 court’s duty to establish subject matter jurisdiction is not contingent upon the parties’
 25 arguments.” *See United Investors Life Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 966 (9th
 26 Cir. 2004). Courts may consider the issue *sua sponte*. *Demery v. Kupperman*, 735 F.2d 1139,
 27 1149 n.8 (9th Cir. 1984). Indeed, the Supreme Court has emphasized that “district courts have
 28 an ‘independent obligation to address subject-matter jurisdiction *sua sponte*.’” *Grupo Dataflux*

1 *v. Atlas Global Grp., L.P.*, 541 U.S. 567, 593 (2004) (quoting *United States v. S. Cal. Edison*
 2 *Co.*, 300 F. Supp. 2d 964, 972 (E.D. Cal. 2004)).

3 4 **II. ANALYSIS**

5 *Sonicview USA* involved claims for violations of the Digital Millennium Copyright Act
 6 (“DMCA”), 17 U.S.C. § 1201, the Federal Communications Act (“FCA”), 47 U.S.C. § 605, and
 7 the Electronic Communications Privacy Act, 18 U.S.C. § 2511. In that case, the defendants
 8 distributed piracy devices and software in violation of the DMCA and FCA. *Sonicview USA*,
 9 2012 WL 1965279, at *7-14. The Court entered judgment in favor of the plaintiffs for
 10 approximately \$66 million. *Id.* at *14. The Court had jurisdiction in that case because it
 11 involved a federal question. Also, only Alan Phu was a defendant in *Sonicview USA* among
 12 Defendants in this case.

13 In this action, Plaintiffs assert only state-law claims against Defendants for Avoidance
 14 and Recovery of Actual and Fraudulent Transfers under California Civil Code §§ 3439.04(a) and
 15 3439.05 and Texas Business and Commerce Code §§ 24.005(a) and 24.006(a). There are eight
 16 claims in total. The assets in question that were allegedly fraudulently transferred are: (1) a
 17 property located 11851 Loara Street, Garden Grove, California 92480; (2) a property located at
 18 8442 Melrose Circle, Westminster, California 92683; (3) 14632 Bromley Street, Westminster,
 19 California 92683; (4) a property located at 3642 Windmill Village Court, Houston, Texas 77082;
 20 (5) a property located at 11851 Garden Grove Boulevard, Garden Grove, California 92843; (6) a
 21 property located at 11751 Yana Drive, Garden Grove, California 92841; (7) a property located at
 22 14752 Hunter Lane, Midway City, California 92655; (8) a property located at 16427 Great Oaks
 23 Hollow Drive, Houston, Texas 77083; (9) a property located 8019 Daylilly Creek, Houston,
 24 Texas 77083; (10) an ownership interest in ALCY Investment LLC, AJ Management LLC, and
 25 ALCY & AJ Management LLC (collectively, the “LLCs”), which are based in Westminster and
 26 Garden Grove, California; and (11) an account transfer of \$223,834.37 from Satellite Dish
 27 Expert, Inc. (“SDE”), a company that Mr. Phu began operating in October 2005. (Compl. ¶¶
 28 6–8, 20–89.) All of these assets appear not to be within the boundaries of the Southern District

1 of California.¹ Plaintiffs allege that “[d]uring the time that Alan Phu was involved with
 2 [Sonicview USA], and specifically while the *Sonicview* litigation was pending, Alan Phu
 3 transferred numerous assets to his wife Cyndi Phu and the limited liability companies that are
 4 named as defendants in this case.” (*Id.* ¶ 19.)


5 Once judgment was entered in the original copyright lawsuit, the ability to resolve
 6 simultaneously factually intertwined issues vanished. *See Peacock*, 516 U.S. at 355. And
 7 neither the convenience of litigants nor considerations of judicial economy can justify the
 8 extension of ancillary jurisdiction over Plaintiffs’ fraudulent-transfer claims. *See id.*
 9 Furthermore, there is insufficient factual dependence between the claims raised this action and
 10 the *Sonicview USA* action to justify the extension of ancillary jurisdiction. As discussed above,
 11 this action exclusively involves state-law claims for the fraudulent transfer of an asset, whereas
 12 the original action involved liability under the DMCA and FCA. The claims in these actions
 13 have no factual or logical interdependence, and under these circumstances, no greater
 14 efficiencies would be created by the exercise of federal jurisdiction over them. *See Kokkenon*,
 15 511 U.S. at 380.

17 **III. CONCLUSION & ORDER**

18 Accordingly, because the complaint does not allege facts necessary to establish subject
 19 matter jurisdiction over this action, the Court **DISMISSES WITHOUT PREJUDICE** this
 20 action in its entirety for lack of subject-matter jurisdiction. *See Peacock*, 516 U.S. at 355-56. If
 21 Plaintiffs can correct these deficiencies in the complaint, they may file an amended complaint by
 22 **April 8, 2013**. *See* 28 U.S.C. § 1653.

23 **IT IS SO ORDERED.**

24 DATED: March 27, 2013

25 
 26 M. James Lorenz
 27 United States District Court Judge

28 ¹ The Court notes that the location of these assets in question suggest there may also be a problem with venue. *See* 28 U.S.C. § 1391(b).